



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,824	06/21/2001	George Alfred Velius	41942-52970	6850
21888 7590 01/14/2009 THOMPSON COBURN, LLP ONE US BANK PLAZA SUITE 3500 ST LOUIS, MO 63101				
EXAMINER BROWN JR, NATHAN H				
ART UNIT 2129		PAPER NUMBER		
NOTIFICATION DATE 01/14/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDOCKET@THOMPSONCOBURN.COM

Office Action Summary

Application No.

09/886,824

Applicant(s)

VELIUS, GEORGE ALFRED

Examiner

NATHAN H. BROWN JR

Art Unit

2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (3) MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 25-31, 35, 37-39, 41-44 and 52-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 25-31, 35, 37-39, 41-44, and 52-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Examiner's Detailed Office Action

1. This Office Action is responsive to the communication for application 09/886,824, filed December 12, 2008.
2. Claims 23, 25-31, 35, 37-39, 41-44, and 52-59 are pending. Claims 23, 26, 35, and 55 are currently amended. Claims 25, 27-31, 37-39, 41-44, 52-54, and 56-59 are previously presented.
3. After the previous office action, claims 23, 25-31, 35, 37-39, 41-44, and 52-59 stood rejected.

Claim Rejections - 35 USC § 112, 1st

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 23, 25-31, 35, 37-39, 41-44, and 52-59 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with

the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 23 and 35 (and their dependents) recite "an adaptive speaker identity verification system" which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically there is no description of any hardware, particularly: processors, memory, and machine readable media, which would support the implementation of such a system.

6. Claims 23, 25-31, 35, 37-39, 41-44, and 52-59 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Independent claims 23 and 35 (and their dependents) recite "an adaptive speaker identity verification system" which

was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically there is no description of any hardware, particularly: processors, memory, and machine readable media, which would be used to make and/or use such a system.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 23, 25-31, 35, 37-39, 41-44, and 52-59 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Independent claims 23 and 35 recite "an adaptive speaker identity verification system" which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention; therefore the invention is considered to be non-functional and thus lack patentable utility. Dependent claims 25-31, 37-39,

41-44, and 52-59 recite only algorithmic details of the operation of the invention and thus do not cure the deficiency of claims 23 and 35. Therefore claims 23, 25-31, 35, 37-39, 41-44, and 52-59 are considered non-statutory under 35 U.S.C. 101.

Response to Arguments

9. Applicant's arguments filed December 19, 2008 have been fully considered but they are not persuasive.

Rejection of Claims , 25-31, 52, 53 and 59 Under 35 U.S.C. §112,

~~1st~~—and 101

Applicant argues:

Claims 23, 25-31, 52, 53 and 59 were rejected under 35 U.S.C. § 101. Applicant deeply appreciates the indication on Page 6, Lines 6-11 that "an adaptive speaker identity verification system" is disclosed in the Applicant's patent application and is illustrated in U.S. Patent No. 5,517,558, which is a physical computing and speech-analyzing machine. In accordance with the Examiner's helpful suggestion, Claim 23 is now amended so that each and every input is solely utilized with the adaptive speaker identity verification system and could not be construed as being independently performed as a mental step, abstraction, or algorithm. Therefore, only a machine, i.e., adaptive speaker identity verification system, can perform each and every function listed in Claim 23 so that any other way of performing the computations and receipt of data is specifically excluded. Moreover, it is also respectfully believed that data that corresponds to

someone's speech is not something that can be replicated manually and is so extraordinarily complex that only a computer can make these complex comparisons and computations. In re Bilski, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008) states that the patent-eligibility of a "business method" invention in the United States will be limited to inventions that are tied to a particular machine or apparatus. In this case, every limitation in Claim 23 is specifically and exclusively tied to adaptive speaker identity verification system, which is recited in the Applicant's patent application and is a physical computing and speech-analyzing machine described in U.S. Patent No. 5,517,558 as is acknowledged by the Examiner. Therefore, since Claim 23 is exclusively tied to a physical computing and speech-analyzing machine, it is respectfully believed that the rejection under 35 U.S.C. § 101 is overcome.

Moreover, since Claims 25-31, 52, 53 and 59 depend from and contain all of the limitations of Claim 23, Claims 25-31, 52, 53 and 59 are felt to overcome the rejection under 35 U.S.C. § 101, since these are only additional limitations to Claim 23 and can only be solely and exclusively performed with a machine, i.e., adaptive speaker identity verification, which is recited in the Applicant's patent application and is a physical computing and speech analyzing machine described in U.S. Patent No. 5,517,558 as is acknowledged by the Examiner.

Therefore, it is respectfully believed that Claims 23, 25-31, 52, 53 and 59 overcome the rejection under 35 U.S.C. § 101, by being amended so that a physical machine is the sole and exclusive mechanism for carrying out the claimed Invention. Claims 35, 37-39, 41-44 and 54-58 were rejected under 35 U.S.C. § 101.

Examiner responds:

While amended independent claims 23 and 35 (and thus, their dependents) recite "an adaptive speaker identity verification system", there is no description in the specification of any hardware that would support an "adaptive speaker identity verification system" as

disclosed in U.S. Patent No. 5,517,558. There is no reference to U.S. Patent No. 5,517,558 in the specification such that the applicant's invention is tied to the particular machine disclosed in U.S. Patent No. 5,517,558 having supporting hardware as disclosed in Fig. 2 and col. 4, lines 40-61. The specification having no hardware disclosure and the claims having no tie to a particular machine or device, requires that the 112, 1st and 101 rejections be maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan H. Brown, Jr. whose telephone number is 571-272- 8632. The examiner can normally be reached on M-F 0830-1700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Vincent can be reached on 571-272-3080. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

Art Unit: 2129

access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

/Nathan H. Brown, Jr./

Examiner, Art Unit 2129

January 13, 2009

/David R Vincent/

Supervisory Patent Examiner, Art Unit 2129